IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3135, 3713, 3714, 3807,
4412, 4722, 5003, 5024, 5041, 5189, 5333, 5645, 6135, 7599,
7600, 7601, 7602 AND 7603 OF 1994.

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.

2. To be referred to the Reporter or not? Yes. or not? Yes. or not? Yes. or not? Yes. or not? Yes. or no ? Yes. or not? Yes. or not? Yes. or not? Yes. or not? Yes. or not? es. or not? Yes. or not? Yes. or not? Yes. or not? Yes. or not? Yes or not? Yes. or not? Yes. or not? Yes. or not? Yes. or not? Yes. or not? Yes. or not? Yes. r not? Yes. or not? Yes. or not? Yes. or not? Yes. or not? Yes. or not? Yes. ot? Yes. or not? Yes. or not? Yes. or not? Yes. o

3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

Appearance:
Mr. K.G. Vakharia, Sr. Counsel with Mr. Tushar Mehta, Devani, for the respondent no.1, in all the petitions.

CORAM : MR.JUSTICE N.N.MATHUR
Date of decision: 23/02/96

ORAL JUDGEMENT

In this group of Special Civil Applications filed by Agricultural Produce Market Committees a short question involved is whether the rice is an agricultural produce covered by the item paddy (husked and unhusked) under the Schedule appended to the Gujarat Agricultural Produce Markets Act, 1963(hereinafter referred to as the Act of 1963). So as to entitled Agricultural Produce Market Committees to levy the market fee on the transactions of sale/purchase of rice within their respective areas.

2. The Agricultural Produce Market Committee has been empowered by section 28 of the Act of 1963 to levy and collect fees on the agricultural produce brought or sold in the market area subject to maxima and minima prescribed by the State Government by making appropriate provisions under the Rules. The agricultural produce is defined under Section 2(i) of the Act which reads as under:-

"2(i) "agricultural produce" means all produce, whether processed or not, of agriculture, horticulture and animal husbandry, specified in the Schedule."

The names of the agricultural produce under different heads namely,

"fibres, cereals , oilseeds, gaur, sugar, sugarcane, fruits, vegetables, animal husbandry products, condiments, spices and others, grass and fodder and cattle sheets".

has been given in the Schedule appended to the Act of 1963. Under head of cereals at item no.2 the entry is made as

"paddy (husked and unhusked)."

3. The say of the petitioners is that the definition of the agricultural produce is comprehensive to cover all the produce whether processed or not, of agriculture, horticulture and animal husbandry specified in the schedule. It is submitted that the paddy (husked and unhusked) is declared to be the regulated agricultural produce i.e. any transaction of sale and purchase of paddy (husked and unhusked) is liable to payment of market fees to the Market Committee. Since from inception all petitioners Agricultural Produce Market Committees paddy (husked and unhusked) is declared as regulated agricultural produce attracting the market fees. It is further submitted that if the entry paddy (husked and unhusked) is read as paddy husked it is nothing but the rice. Explaining it, it is submitted that if the paddy undergoes husking, the resultant product is rice. Earlier the paddy was

husked by manual labour for the purpose of converting it into rice. Subsequently, because of technological development the said process is carried out by mechanical device of the Rice Mill. Thus, if the paddy is processed i.e. husked the rice is the outcome of the process. The Legislature having provided a wider meaning of Agriculture Produce i.e. "Whether husked or not" did not felt necessary of mentioning rice as a different item as Paddy is nothing but a husked Paddy and as such an Agriculture Produce. and therefore the Legislature has used the words "whether processed or not". This is very clear meaning and the Legislature did not consider it proper to separately mention the rice as a paddy item.

4.. Mr. K.G. Vakharia, learned Sr. Counsel for the petitioners in order to further substantiate his contention has referred to the Law Lexicon and Words & Phrases in order to understand the dictionary meaning of paddy and rice. In the law of Lexicon by P. Ramnatha Aiyar, 1987 Edition, "paddy means unhusked rice". "Rice" means paddy without husked. In S.B. Sarkar's Words & Phrases of Central Excise & Customs,

> "rice means rice before threshing or in the husk is called 'paddy'. Husk is is the dry outer covering. Bran is husks of grain separated from flour after grinding."

5. Thus, the contention of Mr. Vakharia is that as the rice is covered by paddy it was not necessary to separately mention rice in the schedule. Mr. Vakharia further submits that that no distinction can be made between the agricultural produce grown inside the market area and the produce grown outside the market area. He has referred to the decision of the Division Bench of this Court, in the case of Chhaganlal Mansukhlal and Another V. The Agricultural Produce Market Committee, Dahod & Another, reported in 16 G.L.R. 916. Mr. Vakharia, relying on the decision of the Apex Court in the case of M/s. Ganesh Trading Co. Karmal etc. Vs. State of Haryana and another etc. reported in AIR 1974 SC 1362, urged that merely because paddy is dehusked and rice is produce there can be no change in the identity of the goods. I have gone through the said Authority and in my view it does not help the petitioners. In the said decision, it is held that "rice is produced out of paddy". Now the question for consideration is whether it can be said that when paddy is dehusked and rice is produced, its identity remain unchanged. It is true that rice is produced out of paddy but it is not correct to say that paddy continued to be paddy even after dehusking. There is definitely change of identity. Rice is not known as paddy. They are two different things in ordinary parlance. Hence quite clearly when paddy is dehusked and rice is produced, there has been a change in the identity of the

goods.

6. Mr. Vakharia has next relied on the decision of the Apex Court in case of Ram Chandra Kailash Kumar & Co. Vs. State of U.P., reported in AIR 1980 SC 1124. He has invited my attention to para 20 of the said judgment. In the said case, one of the questions before the Court was if the market committee could levy fees on transactions of goods not produced within the limits of the market area by the Market Committee of that area though the goods are produced outside the State or outside the market area particularly market committee. While discussing the question,, the Court found that by and large in the notification dated April 11, 1978 there is hardly any duplication of any item of agricultural produce. The Court said that in the case of Animal Husbandry Products, milk has been omitted although it is to be found in the list appended to the Act. From the milk Ghee or Khoya can be produced and Items 1 and 2 in Group D are said articles. Hides and Skins can be had from the animals, so wool is obtained from the sheep. The Court also said that in the case of paddy and rice mentioned in Items 3 and 4 in Group A-I "Cereals" there is a duplication as rice is obtained from paddy. The Court clarifying the position of law stated that if the paddy is purchased in a particular market area by a rice miller and the same paddy is converted into rice and sold then the rice miller will be liable to pay market fee on his purchase of paddy from the agricultural produce under sub-caluse (2) of Section 17 (iii) (b). He cannot be asked to pay market fee again. This aspect has been explained by the Supreme Court in the case of Sreenivasa General Traders and others etc. Vs. State of Andhra Pradesh, reported in AIR 1983 SC 1246. The Court after extracting the observations from para 20 of Ram Chandra's case, held that one is apt to think that rice and paddy are the same commodity and therefore there is double taxation but, in reality, it is not so. There is distinction between "paddy" and "rice" and although paddy is milled into rice by the process of de-husking, they are two separate and distinct commercial commodities. Both have been separately specified as notified agricultural produce in Schedule II as items 1 and 2 respectively.

7. It is a settled position of law that the words or expressions may be construed in the sense in which they are understood in common parlance or in the trade of the dealer and the consumer. In the case of Ramavatar Budhaiprasad etc. Vs. Assistant Sales Tax Officer, Akola and Another, reported in AIR 1961 SC 1325 the Supreme Court held that in the C.P. and Berar Sales Tax Act "vegetables" and "betel leaves" were shown as separate item exempted articles from the Sales Tax. Subsequently, "betel leaves" were removed from the scheduled. It was submitted that "betel leaves" were vegetable and

therefore they were exempted from the Sales Tax. Reliance was placed on the dictionary meaning of the word "vegetable" as given in Shorter Oxford Dictionary. The court held that the word must be construed not in technical sense nor from the botanical point of view but as understood in common parlance. The court further observed that a word of every day must be construed in its popular sense meaning that sense which people conversant with the subject matter with which the statute is dealing would attribute to it. It is to be construed as understood in common language.

8. In the case of M/s Indo International Industries Vs. Commissioner of Sales Tax, Uttar Pradesh, reported in AIR 1981 SC 1879. The question was whether clinical syringes can be considered as "glass ware" falling within Entry 39 of the First Schedule appended to the U.P. Sales Tax Act. The Court ruled that it is well settled that in interpreting items in statutes like the Excise Tax Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances resort should be had not to the scientific and technical meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. If any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted. Applying settled position of law the Court held that dictionary meaning of the expression "glassware" is "articles made of glass". However, in commercial sense glassware would never comprise articles like clinical syringes, thermometers, lactometers, and the like which have specialised significance and utility. In popular or or commercial parlance a general merchant dealing in "glassware" does not ordinarily deal in articles like clinical syringes, thermometers, lactometers, etc. which articles though made of glass, are normally available in medical stores or with the manufacturers thereof like the assessee. The Court further held that consumer would ask for such articles from a glass ware shop. In popular sense when one talks of glassware such specialised articles like clinical syringes, thermometers, lactometers and the like do not come up to one's mind. The Court accordingly held that the clinical syringes which the assessee manufactures and sells cannot be considered as "glassware" falling within Entry 39 of the First Schedule of the Act. Canon of construction has been invoked in this type of status in number of decisions. It is not necessary to refer all of them. Reference may be given to AIR 1985 SC 1644 and AIR 1986 SC 1731.

9. Mr. Vakharia, Ld. Sr. Counsel for the petitioner

submits that all the cases referred to pertains to the taxing statutes and this cannot be applied to Agricultural Produce Markets Act, 1963. The purpose of the Act is not to levy tax but to regulate the market fees and for that purpose the schedule has been prepared. He further submitted that the Act of 1963 has been enacted with a object to consolidate and amend the law relating to the regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Gujarat. Thus, it is the beneficial provisions for the benefit of the farmers and as such the provisions and the Act must be interpreted as that of beneficial statute to help the farmers by giving wider meaning of the definition of the "Agricultural Produce". It is, of course, true that the Agricultural Produce Markets Act is not a taxing statute. But the questions raised in these Special Civil Applications as to Section 28 of the Act of 1963 which empowers the Market Committee to levy and collect fee and thus it is an essentially a question of raising the revenue for regulating the Market for the ultimate benefit of the farmers. In view of the aforesaid discussion, there is no substance in this contention.

10. Thus, in view of the aforesaid, the decision of the State Government in response to the representation of Gujarat Chamber of Commerce, conveyed under communication dated 12-1-1994 to the effect that the Market Act list containing the regulated items only contains Paddy (husked and unhusked), and does not include rice as such that being a converted agriculture produce, is not liable to levy of cess, is correct in substance, without accepting the reasoning, calls for no interference.

11. There is no merit in these Special Civil Applications and the same are rejected. Rule is discharged in all the Special Civil Applications.

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